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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY LEON GREENHILL,

Defendant and Appellant.

F076968

(Super. Ct. No. 17CMS0373)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kings County. Donna L. Tarter, Judge.

Victoria H. Stafford, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans and Henry J. Valle, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Peña, J. and Smith, J.

## **INTRODUCTION**

Appellant Anthony Leon Greenhill stands convicted of second degree robbery and obstructing justice. It also was found true that Greenhill had two prior strike convictions and had previously been convicted of a serious felony in 1976. Greenhill contends the evidence is insufficient to sustain the robbery conviction; the trial court abused its discretion when it declined to strike his prior convictions; and the matter must be remanded for the trial court to exercise its discretion under Senate Bill No. 1393 (2017-2018 Reg. Sess.) (Senate Bill 1393). We will remand the matter for the trial court to exercise its discretion under Senate Bill 1393 and in all other respects, we affirm.

## **FACTUAL AND PROCEDURAL SUMMARY**

The Kings County District Attorney charged Greenhill in count 1 with second degree robbery, a felony, in violation of Penal Code section 211<sup>1</sup>; and in count 2 with obstructing justice, a misdemeanor, in violation of section 148, subdivision (a)(1). It also was alleged that Greenhill had suffered two prior serious felony strike convictions and had previously been convicted of a serious felony.

Testimony at trial established that Teresa Lewis worked for Educational Employees Credit Union (EECU) in Hanford. Her duties at EECU were to “perform everyone’s transactions for them.” Her work area consisted of a teller drawer and computer; she was separated from customers by a counter. There was no glass partition on the counter.

On February 27, 2017, shortly after opening, a man walked up to her station and “asked for 100’s, 50’s, and 20’s.” The man was wearing a black jacket and black gloves. He had “salt and pepper hair.” Lewis identified the man as Greenhill.

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<sup>1</sup> References to code sections are to the Penal Code unless otherwise specified.

When he made the request, Lewis was at first confused because he did not give her an account number. Greenhill then repeated his request and asked for 100's, 50's, and 20's. Greenhill brought his hands up and Lewis saw he was wearing gloves; she knew then she was being robbed. Lewis had a "little over \$10,000" in her drawer at the time. Lewis testified she was scared when Greenhill demanded the money from her.

Lewis handed over the money in her drawer, including the bait money. Lewis described bait money as money that has been marked in case they are robbed; it is clipped separately. Greenhill took the money, except the one dollar bills. He handed back the bait money. After Greenhill walked out, Lewis closed her station and told management what had happened.

The surveillance video from EECU showed Greenhill at Lewis's station that morning. The video was shown to the jury.

Crystal Eaton also worked for EECU at the Hanford branch on February 27, 2017, as a teller. On that morning, she saw Greenhill walk into EECU; he was wearing a "long black coat and thick black gloves." Eaton watched as Greenhill walked up to Lewis and "demanded that she give him all her 100's, 50's, and 20's." Eaton's station was immediately to the right of Lewis. Eaton pressed the "panic button immediately" because she "knew it was a robbery." Eaton knew it was a robbery because Greenhill "demanded the money from [Lewis] not once, but twice." Eaton was scared.

Police Officer Patrick Jurdon was dispatched to investigate the silent alarm triggered at EECU. He responded to the location and began looking for anyone matching the description that had been broadcast of the suspect. Jurdon's search took him to a nearby Sears Auto Center, where he saw a man matching the description of the suspect.

Jurdon stopped his patrol vehicle and "advised the subject to stop." Instead, the suspect kept walking. Jurdon continued to give orders to stop; the suspect began running towards the Hanford Mall. Jurdon gave pursuit on foot and managed to apprehend the

suspect; he called for backup and placed the suspect under arrest. As Jurdon was running to catch the suspect, he noticed a pile of black clothing between a wall of the Sears Auto Center and an electrical panel.

Jurdon was wearing a body camera the morning he arrested Greenhill. The video from the body camera was played for the jury.

Police Officer Jonathan Rivera assisted in the arrest of Greenhill. Rivera emptied Greenhill's pockets to make sure Greenhill did not possess any weapons. Greenhill had stacks of money, a folding knife, two screwdrivers, and some other items in his pockets.

Raymond Dias was a detective with the Hanford Police Department in 2017. Dias arrived at the Sears Auto Center after Greenhill was in custody. Dias collected a pair of gloves located just east of the Sears Auto Center, and a leather jacket and a pair of sweatpants from behind the Sears Auto Center, in between the electrical box and the wall.

Dias and an officer counted the denominations of money found on Greenhill. A total of \$10,440 was found on Greenhill at the time of his arrest and another \$15 was in the jacket found behind the Sears Auto Center, for a total of \$10,455. Dias took the money to EECU; the tellers counted it and confirmed the total was \$10,455. The tellers also provided Dias with a receipt, showing the denominations of the bills and the total. It was later confirmed that the total amount stolen from EECU was \$10,455.

Greenhill testified in his own defense. He had been visiting with friends in Hanford. He had his friends drop him at the Hanford Mall to find his way home before they left for Bakersfield. He spotted the EECU branch and decided to ask about overdraft protection. Greenhill claimed he walked into the bank with the intent to ask about overdraft protection.

Greenhill claimed he approached Lewis's window and said, "I need some money," and " 'I need like 50 to 100.' " Lewis bent down and "sets a big pile of money on the counter." Then she "dips again, comes up with more money." Greenhill testified Lewis

“never said nothing, anything to me.” Greenhill was “thinking, well, I mean, she is giving it, I am taking it. So I just started folding it up, folding it up.”

After picking up the money, Greenhill walked out of EECU. He was taking the money out of his coat when he heard sirens. Greenhill dropped the coat next to the electrical box. He claimed he was wearing gloves to cover his tattoos and an injury to his hand.

On August 22, 2017, the jury found Greenhill guilty of both counts and found true that he had two prior strike convictions and had been convicted in 1976 of a serious felony.

On December 29, 2017, Greenhill moved to strike the prior strike convictions. The trial court denied the motion.

Greenhill was sentenced on January 17, 2018, to a term of 25 years to life on count 1, plus an additional five years pursuant to section 667, subdivision (a)(1), for the prior serious felony conviction. The term for the count 2 offense was 364 days and he was credited with this time. He was awarded total credits of 373 days and various statutory fines and fees were imposed.

Greenhill filed a timely notice of appeal on January 22, 2018.

## **DISCUSSION**

Greenhill contends the evidence is insufficient to sustain the robbery conviction; the trial court abused its discretion when it declined to strike his prior convictions; and the matter must be remanded for the trial court to consider exercising its discretion under Senate Bill 1393.

### **I. Sufficiency of the Evidence for Robbery**

In reviewing a challenge to the sufficiency of the evidence, appellate courts review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible, and of solid

value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. In cases where the People rely primarily on circumstantial evidence, the standard of review is the same. (*People v. Solomon* (2010) 49 Cal.4th 792, 811 (*Solomon*), citing *People v. Thomas* (1992) 2 Cal.4th 489, 514.) An appellate court must accept logical inferences the jury may have drawn from the evidence even if the appellate court would have concluded otherwise. (*Solomon, supra*, 49 Cal.4th at pp. 811-812.)

Robbery is “the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” (§ 211.) Case law recognizes that “a robbery can be accomplished even if the property was peacefully or duplicitously acquired, if force or fear was used to carry it away.” (*People v. Gomez* (2008) 43 Cal.4th 249, 256.) The element of fear required for a robbery conviction is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand to turn over property. (*People v. Smith* (1995) 33 Cal.App.4th 1586, 1595.)

Fear may be inferred from the circumstances in which the property was taken. (*People v. Holt* (1997) 15 Cal.4th 619, 690.) The requisite fear need not be the result of an express threat or the actual use of a weapon. (*People v. Flynn* (2000) 77 Cal.App.4th 766, 771.) An unlawful demand can convey an implied threat of harm supporting an inference of fear. (*People v. Morehead* (2011) 191 Cal.App.4th 765, 775-777.)

Here, Greenhill walked up to Lewis wearing a black jacket and black gloves. He “asked for 100’s, 50’s, and 20’s.” When Lewis did not immediately comply, Greenhill then repeated his request and brought his hands up, at which point Lewis knew she was being robbed. Lewis testified she was scared when Greenhill demanded the money from her.

Another teller, Eaton, who saw Greenhill and heard his statements to Lewis, was equally certain Greenhill was committing a robbery. Eaton watched as Greenhill walked

up to Lewis and “demanded that she give him all her 100’s, 50’s, and 20’s.” Eaton pressed the “panic button immediately” because she “knew it was a robbery.” Eaton knew it was a robbery because Greenhill “demanded the money from [Lewis] not once, but twice.” Eaton was scared.

When Greenhill was arrested shortly after the robbery, he had the money in his possession along with a folding knife and two screwdrivers.

Greenhill did not have to act in a physically aggressive manner, or verbalize a threat, to generate fear in the victim. Two people, Lewis and Eaton, heard Greenhill make an unlawful demand and both testified to being scared by Greenhill’s unlawful demand. In addition, Greenhill was wearing a long jacket that could easily conceal a weapon, was wearing gloves, and brought his hands up when Lewis did not immediately comply with his demand for money. The unlawful demand and the implied threat engendered actual fear in both Lewis and Eaton. (*People v. Morehead, supra*, 191 Cal.App.4th at pp. 775-777.) The fear was sufficient to cause Lewis to comply with Greenhill’s demand. (*People v. Smith, supra*, 33 Cal.App.4th at p. 1595.)

There is sufficient evidence from which the jury logically could conclude that Greenhill’s conduct constituted an implied threat and generated fear prompting Lewis to comply with Greenhill’s demand. (*Solomon, supra*, 49 Cal.4th at pp. 811-812.)

## **II. Prior Convictions**

Greenhill moved to strike his prior convictions. At the hearing on January 17, 2018, the trial court denied the motion, stating that its analysis pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*) “will be contained in my analysis for the sentencing.”

Prior to articulating the sentence, the trial court gave its reasons and analysis. The trial court noted that Greenhill exhibited “quite a bit of sophistication” during the robbery because the video of the robbery showed that Greenhill declined to take the bills that had

a tracking device attached to them. Greenhill ran from officers, then attempted to conceal his identity by removing his glasses, gloves, and jacket. The trial court also commented that two tellers were in fear during the robbery.

The trial court also noted that Greenhill had a record of offenses dating back to 1976. Greenhill went to prison in 1979 for second degree burglary; he was paroled in that case and committed another second degree burglary; then he was sentenced to prison again. While in prison, Greenhill committed two additional felonies. He was paroled in 1993 and while on parole committed another crime, which was a federal offense. Greenhill was on federal parole at the time he committed the current offense at EECU.

The trial court noted that Greenhill, “has been incarcerated for almost his entire adult life, and although he was released from custody for a fairly lengthy period of time from federal prison, a warrant was issued for his arrest in that case, and this conduct did not trigger the issuance of that warrant. So [Greenhill] somehow violated his federal parole.”

The trial court commented that it understood it had the discretion under *Romero* to strike Greenhill’s prior convictions but found the 1976 prior convictions were not remote in time because Greenhill had spent “his entire adult life” in prison and had committed the current offense while on parole for a federal offense. The trial court concluded by stating it was “of the opinion that [Greenhill’s] conduct fits squarely within the spirit of the Three Strikes Law” and declined to strike the prior convictions.

A trial court’s power to strike or dismiss a prior conviction may be exercised only “ ‘ “in furtherance of justice,” ’ which mandates consideration of ‘ “the constitutional rights of the defendant, and the interests of society represented by the People.” ’ ” (*People v. Clancey* (2013) 56 Cal.4th 562, 580, italics omitted.) “ ‘At the very least, the reason for dismissal must be “that which would motivate a reasonable judge.” ’ ” (*Romero, supra*, 13 Cal.4th at pp. 530-531; *People v. Orin* (1975) 13 Cal.3d 937, 945.)



Moreover, a court's decision whether or not to exercise this power is subject to review for abuse of discretion. (*Romero, supra*, 13 Cal.4th at p. 530; *People v. Carmony* (2004) 33 Cal.4th 367, 375 (*Carmony*).)

“In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, ‘ “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.’ ” ’ [Citations.] Second, a ‘ “ ‘decision will not be reversed merely because reasonable people might disagree. “An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.” ’ ” ’ [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Carmony, supra*, 33 Cal.4th at pp. 376-377.)

Greenhill contends the trial court abused its discretion in declining to strike his prior convictions. He contends the trial court failed to consider his age, the mitigated nature of the current offense, and the remoteness of his prior convictions. The record does not support Greenhill's contention.

The trial court clearly considered whether the prior convictions were remote in time, finding that they were not because Greenhill had spent his adult life either incarcerated or on parole and was on federal parole when he committed the current offense. There is no abuse of discretion in refusing to strike a prior conviction based on remoteness in time when the defendant has led a continuous life of crime, as here, after that conviction. (*People v. Humphrey* (1997) 58 Cal.App.4th 809, 813.)

As for Greenhill's contention about the mitigated nature of the current offense, the trial court did not so find. The trial court noted the current offense engendered fear in

two tellers and Greenhill demonstrated sophistication during the robbery. No mitigating factors were articulated.

With respect to Greenhill's age, the trial court did not specify Greenhill's age during its comments. However, the trial court did read the sentencing report, which notes Greenhill is 59 years of age. Greenhill's age alone does not remove him from the spirit of the "Three Strikes" law. (*People v. Strong* (2001) 87 Cal.App.4th 328, 345.)

In ruling on a *Romero* motion, a trial court must conduct an inquiry to determine whether the defendant falls outside the spirit of the Three Strikes law and consider factors such as the nature of the present offense, the defendant's criminal history, and individualized characteristics of the defendant. (*People v. Williams* (1998) 17 Cal.4th 148, 161.) Here, the trial court read Greenhill's motion to strike the prior convictions and the sentencing statement submitted by Greenhill. The trial court then engaged in the required inquiry and concluded Greenhill "fits squarely within the spirit of the Three Strikes Law."

We have no reason to hold that the trial court's decision was so irrational or arbitrary that no reasonable person could agree with it. (*Carmony, supra*, 33 Cal.4th at p. 377.)

### **III. Senate Bill 1393**

At sentencing, the trial court imposed a term of 25 years to life for the count 1 offense of robbery, pursuant to section 667, subdivisions (b)-(i) and the prior strike convictions. An additional five-year term for the section 667, subdivision (a)(1) serious felony enhancement also was imposed.

Greenhill filed supplemental briefing based on newly enacted Senate Bill 1393, which ends the statutory prohibition on the trial court's ability to strike a prior serious felony enhancement. He seeks remand to allow the trial court to reconsider sentencing,

considering the new law that allows it discretion to strike the five-year enhancement imposed for prior serious felony convictions.

Senate Bill 1393, signed into law on September 30, 2018, amends sections 667 and 1385 to provide the trial court with discretion to dismiss, in the furtherance of justice, five-year enhancements imposed pursuant to section 667, subdivision (a)(1). (Stats. 2018, ch. 1013, §§ 1-2). The new law became effective on January 1, 2019. The law is applicable to those parties, like Greenhill, whose appeals are not final by the law's effective date. Here, Greenhill seeks remand to permit the trial court to review his five-year enhancement for a prior serious felony in light of Senate Bill 1393. The People respond that the court's language at sentencing reflects it would not have struck defendant's strike even if it had discretion to do so; thus, remand is not required.

Our Supreme Court has held “ ‘[d]efendants are entitled to sentencing decisions made in the exercise of the “ informed discretion” of the sentencing court. [Citations.] A court which is unaware of the scope of its discretionary powers can no more exercise that “ informed discretion” than one whose sentence is or may have been based on misinformation regarding a material aspect of a defendant's record.’ [Citation.] In such circumstances, ... the appropriate remedy is to remand for resentencing unless the record ‘clearly indicate[s]’ that the trial court would have reached the same conclusion ‘even if it had been aware that it had such discretion.’ ” (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1391; see *People v. McDaniels* (2018) 22 Cal.App.5th 420, 425–428.)

Although the trial court conducted an analysis for purposes of *Romero* and determined Greenhill “fits squarely within the spirit of the Three Strikes Law” and thus, Greenhill should serve a term of 25 years to life for the count 1 robbery offense, there was no discussion or analysis of the section 667, subdivision (a)(1) enhancement at sentencing, except to impose it.

At the time of sentencing, the trial court did not have discretion to strike the section 667, subdivision (a)(1) enhancement, unlike the prior strike offenses. The court recognized it had the power to strike the prior convictions and exercised its informed discretion to not strike the prior convictions and impose a three strikes sentence of 25 years to life.

The trial court did not have the discretion to dismiss the section 667, subdivision (a)(1) enhancement at the time of sentencing, nor did the trial court indicate that it would impose the section 667, subdivision (a)(1) five-year enhancement even if it had discretion to dismiss the enhancement.

Under these circumstances, we will remand the matter for the limited purpose of providing the trial court an opportunity to exercise its informed discretion to dismiss or impose the section 667, subdivision (a)(1) enhancement. (*People v. Gutierrez, supra*, 58 Cal.4th at p. 1391; see *People v. McDaniels, supra*, 22 Cal.App.5th at pp. 425-428.)

### **DISPOSITION**

The matter is remanded for resentencing for the limited purpose of allowing the trial court to consider exercising its discretion pursuant to Penal Code sections 667, subdivision (a) and 1385, subdivision (b), as amended by Senate Bill No. 1393 (2017-2018 Reg. Sess.). In all other respects the judgment is affirmed.